

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 2510 of 1988

For Approval and Signature:

Hon'ble MR.JUSTICE J.M.PANCHAL

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1. Whether Reporters of Local Papers may be allowed : NO  
to see the judgements?
  2. To be referred to the Reporter or not? : NO
  3. Whether Their Lordships wish to see the fair copy : NO  
of the judgement?
  4. Whether this case involves a substantial question : NO  
of law as to the interpretation of the Constitution  
of India, 1950 of any Order made thereunder?
  5. Whether it is to be circulated to the Civil Judge? : NO

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JANATA LARIFERI UNION

Versus

AHMEDABD MUNICIPAL CORPORATION  
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Appearance:

MRS SANGEETA N PAHWA for Petitioner

MR PRASHANT G DESAI for Respondents  
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CORAM : MR.JUSTICE J.M.PANCHAL

Date of decision: 25/08/2000

ORAL JUDGEMENT

By means of filing this petition under Article 226 of the Constitution, the petitioner i.e. Janata Lariferi Union representing Larigallawalas and Patharnawalas doing their business in Ahmedabad city, has prayed to issue an appropriate writ, order or direction

to quash and set aside the scheme framed by the Commissioner of Ahmedabad Municipal Corporation as illegal, unauthorised, invalid and being in violation of fundamental rights guaranteed by Articles 14, 19(1)(g) and 21 of the Constitution. The petitioner has further prayed to compel the respondents to implement and act upon the schemes which are produced at Annexures-C, D & E to the petition. The petitioner has also prayed to restrain the respondents from interfering with the larigallawalas and patharnawalas in doing their business at present till the implementation of the schemes produced at Annexures-C, D & E to the petition. The petitioner has also prayed to direct the respondent no.1 to frame a fresh scheme for those larigallawalas and patharnawalas who were left out while framing schemes produced at Annexures C, D & E to the petition.

2. Mr. P.K.Ruwala, Deputy Estate Officer, Ahmedabad, Municipal Corporation, has filed affidavit-in-reply on behalf of the respondents no.1 to 3 controverting the averments made in the petition.

3. Heard the learned counsel for the parties. The history of the litigation between the parties shows that unauthorised obstruction was caused by certain hawkers within the limits of Municipal Corporation of Ahmedabad as also within the limits of Vadodara City and Surat City. The Corporation authorities had tried to remove them from the public places and, therefore, several writ petitions were filed in this High Court from 1980 to 1984. The Division Bench of this High Court by judgment dated December 23, 1985 had disposed of the writ petitions. Various legal contentions about the right of the parties to occupy the public street were turned down. After rejecting the contentions, the penultimate direction given by the Division Bench was that the Corporation should prepare a scheme with modifications, as may be necessary, in the areas under the jurisdiction of the Corporation on the lines of the scheme as modified and approved by the Supreme Court in Bombay Hawkers' Union v. Bombay Municipal Corporation, 1985 SCC 525. The direction was to prepare the scheme within a period of three months. Accordingly, the Municipal Commissioner, Ahmedabad had framed the final scheme. It is not necessary in the present petition to consider the details of the said scheme. The judgment rendered by the Division Bench was challenged by several parties before the Supreme Court by filing petitions for special leave to appeal. Some of the parties, who did not file petitions for special leave to appeal in the Supreme Court, had instituted writ petition under Article 32 of

the Constitution. The Supreme Court by order dated July 28, 1986 directed this Court to examine the scheme and after hearing the petitioners, if any, to suggest such modifications which were found to be appropriate and desirable and forward the report to the Supreme Court. The Division Bench of this High Court had accordingly examined the scheme and heard the objections of the parties and submitted report to the Supreme Court to the effect that the scheme prepared by the respondent-Corporation should be accepted subject to the modifications specified in the report. When the objections were listed for hearing before the Supreme Court, it was contended by some of the petitioners that because of the disturbed condition in Ahmedabad City at the relevant time, they could not point out their difficulties. The Supreme Court, therefore, by order dated October 8, 1987 had again directed the High Court to consider as to whether the scheme as modified by it was required to be modified or not. The Division Bench of this High Court again considered the report, heard the learned advocates for the parties and expressed the view that no modification was necessary, except one suggested by the learned advocates for the parties, which was specified in the order. The Supreme Court thereafter heard some of the matters on January 6, 1988 and remaining matters on February 3, 1988 and disposed of the matters observing as under :-

"On consideration of all aspects of the case, we feel that the scheme approved by the High Court on April 22, 1987 as modified by the supplementary report, dated December 7, 1987 submitted to this Court should be affirmed and accepted by us and the said scheme as modified by the supplementary report, dated December 7, 1987 submitted to this Court should be affirmed and accepted by us and the said scheme as modified by the supplementary report dated December 7, 1987 should be treated as sufficient for purposes of meeting the requirements of the situation. There shall be an order in all these petitions in the above terms in modification of the judgment of the High Court."

Thereafter an attempt was made by Ahmedabad Municipal Corporation to implement the scheme, but several suits were filed in the City Civil Court, Ahmedabad and notices of motion were taken out for restraining the respondents from removing the cabins,

larry-gallas and patharans from the places indicated in the scheme. Injunction as prayed for was not granted and, therefore, several appeals were filed in the High Court against interim orders. The learned Single Judge of this Court by judgment dated April 29, 1988 had dismissed the appeals, but issued certain directions laying down the procedure to be followed before removal of the larry-gallas etc. After the order of the learned Single Judge, the respondent-Corporation had proceeded to implement the scheme and removed the encroachment and issued public notice dated May 7, 1988. Thereupon, Special Civil Application No.2577/88 was filed, which was subsequently withdrawn on December 22, 1988 in view of pendency of Special Civil Application No.7828/88. It may be stated that in Special Civil Application No.7828/88, initially interim relief was granted by the learned Single Judge of this Court which was vacated by Division Bench comprising P.R.Gokulakrishnan, C.J. & P.M.Chauhan, J. vide order dated February 9, 1989.

The history of litigation which is mentioned earlier, indicates that the respondents have framed schemes pursuant to orders which are confirmed by the Supreme Court. The Division Bench of this Court, after referring to the judgment of the Supreme Court in Bombay Hawkers' Union & ors. (supra) has held that the hawkers have no fundamental or legal right to occupy parts of public street for doing their business and section 231 of the Bombay Provincial Municipal Corporations Act is not ultra vires Articles 14, 19 & 21 of the Constitution. As per the scheme, different zones have been earmarked by the Corporation for larry-gallawalas and patharnawalas etc. and on fulfilment of condition precedent, necessary licences are being granted to those who apply for the same. The reply affidavit indicates that the schemes produced at Annexures-C, D & E to the petition, are approved by the highest court of land and are being implemented. The scheme, which is prepared by the Commissioner of Ahmedabad Municipal Corporation is a scheme as directed by this Court and the Supreme Court and, therefore, no direction can be given to respondent no.1 to frame a fresh scheme for larry-gallawalas and patharnawalas etc. The result of the above discussion is that there is no merit in the petition and the petition deserves to be dismissed.

For the foregoing reasons, the petition fails and is dismissed. Rule is discharged, with no order as to costs.

(J.M.Panchal, J.)

(patel)